IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4922 of 1999

For Approval and Signature:

HONOURABLE **MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

1 to 5 :: NO

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UDYOG BHARATI - Petitioner(s)

Versus

SHIBUBHAI GAMBHIRSINHJI SOLANKI - Respondent(s)

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Appearance :

MR DG CHAUHAN for Petitioner

MS SJ SHAIKH for MR IM PANDYA for Respondent

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 09/11/2006

ORAL JUDGMENT

The petitioner before this Court is Udyog Bharati, a Public Charitable Trust [hereinafter referred to as, "***the Udyog Bharati***"]. The Udyog

Bharati challenges the judgment and award dated 16th April, 1999 passed by the Labour Court, Rajkot in Reference [LCR] No. 341 of 1988.

By Order dated 9th February, 1987 made by the Udyog Bharati, the respondent-Shibubhai Gambhirsinhji Solanki was appointed on probation on terms and conditions mentioned in the appointment order. Under the said terms and conditions, the respondent was appointed on probation for a period of six months; the Udyog Bharati had a right to extend the period of probation for a further period of three months, and still for a further period of three months. Even after expiry of the period of twelve months the probation would continue until specific order for confirmation was made. It appears that the service of the respondent was terminated on 11th September, 1987 for want of suitability. Feeling aggrieved by the order of his termination from service, the respondent raised an industrial dispute which came to be referred to the Labour Court, Rajkot and registered as above.

The respondent filed statement of claim before the Labour Court. According to the respondent, he was

posted at Poly Vastra Bhavan, Rajkot as a Manager and that he was performing clerical duties also; that his service was terminated without any reason; and that other employees appointed after him were continued. Thus, his service was terminated in violation of Sections 25-F, 25-G & 25-H of the Industrial Disputes Act, 1947 [hereinafter referred to as, "***the Act***"].

The said claim was contested by the Udyog Bharati by filing written statement Exh.7. According to the Udyog Bharati, the respondent was appointed as a Manager at Poly Vastra Bhavan, Rajkot and that he was not a "*workman*" within the meaning of Section 2 (s) of the Act. It was denied that the termination of his service was in contravention of Sections 25-F, 25-G and 25-H of the Act.

Before the Labour Court, the respondent gave evidence in support of his pleadings. In his oral evidence also, the respondent admitted that he was appointed as a Manager. He, however, did not have power to make appointment, retrenchment of the staff at Rajkot. He admitted that he was the only Manager at Rajkot and that he was authorized to sign the cheques. One Shri Ajay Doshi, Chief General Manager,

Udyog Bharati also gave evidence before the Labour Court. He supported the pleadings filed by the Udyog Bharati. He gave evidence that the respondent had served for 175 days including the holidays. He stated that since the termination of service of the respondent, the said witness had taken over the charge from the respondent.

The learned Judge opined that as the respondent had no power to make appointment, retrenchment or order suspension of the other employees he, therefore, was a workman within the meaning of Section 2 (s) of the Act. The learned Judge has also held that since the termination of the service of the respondent, the Udyog Bharati had appointed one Maheshbhai Desai in the place of the respondent. The *impugned* action of the Udyog Bharati was, therefore, in violation of Sections 25-G and 25H of the Act.

Mr. Chauhan has assailed the judgment. He has relied upon the pleadings and evidence led before the Labour Court. He has submitted that the learned Judge has not considered that as the respondent was the only Manager at Rajkot, the question of seniority did not arise. He has further submitted that contrary to

the specific pleadings and evidence before the Court below, the learned Labour Judge has wrongly held that the respondent was a workman. In the submission of Mr. Chauhan, the *impugned* order is vitiated for inherent lack of *jurisdiction* of the Labour Court.

The petition is contested by Miss Shaikh. She has supported the *impugned* judgment. She has relied upon the appointment order Exh.12. She has submitted that the appointment order specifically mentioned the words *"Karmachari"* and *"Kamdar"*. Hence, the respondent was necessarily a workman within the meaning of Section 2 (s) of the Act.

I am unable to agree with Miss Shaikh. It is not the nomenclature used in the appointment order but the actual duties performed by the person which should determine his status in an organization, either as a workman or as a supervisor. In the present case, the respondent came out with a specific case that he was appointed as a Manager and that he was the only Manager at Rajkot. He has also admitted that he use to retain the cheque book and was authorized to sign cheques for the payments to be made. It also comes out in the evidence of the Udyog

Bharati that the respondent was performing managerial functions and not the clerical or manual functions as alleged by the respondent. Merely because the respondent had no power to make recruitment or appointment of other employees, he did not cease to be a Manager.

In my view, the learned Judge has erred in emphasizing on the functions which were not performed by the respondent and to hold that the respondent was a workman, as alleged by him. The real test is the nature of the functions performed by the respondent. As stated heretofore, it has come on the pleadings and evidence that the respondent was performing managerial/supervisory functions.

In view of the above discussion, I hold that the Udyog Bharati has successfully established that the respondent was appointed as a Manager and was not a workman within the meaning of Section 2 (s) of the Act.

Now that I have held that the respondent was not a workman within the meaning of the Act, the Labour Court had no *jurisdiction* to entertain and

decide the matter at dispute. The *impugned* judgment and award is vitiated by inherent lack of *jurisdiction*.

In above view of the matter, the petition is allowed. The *impugned* judgment and award dated 16th April, 1999 passed by the Presiding Officer, Labour Court, Rajkot in Reference [LCR] No. 341 of 1988 is *quashed* and set-aside. Rule is made absolute. The parties shall bear their own cost.

{Miss R.M Doshit, J.}

*Prakash**